

In Re: Krishnaswami Alias Kittan

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Court : Chennai

Decided On : Apr-06-1948

Reported in : 1949CriLJ115; (1948)2MLJ115

Judge : Horwill and; Mack, JJ.

Appellant : In Re: Krishnaswami Alias Kittan

Judgement :

ORDER

Horwill, J.

1. The appellant has been convicted by the learned Sessions Judge of Coimbatore of the murder of his brother and has been - sentenced to transportation for life.

2. Nobody actually saw the murder committed; but p.w.s. 2 to 4 came on the scene upon hearing cries of 'Ayyo' from the deceased and found that he had a penetrating wound in the abdomen, through which the intestines were protruding. He said that the appellant had stabbed him. The evidence shows that the appellant had been much taking to heart the tendency of his brother to commit petty thefts; and when taxed with the offence after his brother had been stabbed, he admitted that he had committed it because he was ashamed of his brother's conduct. The deceased made a statement to those gathered there immediately after the offence and said that his brother had stabbed him. He repeated this

statement when he was formally examined at the hospital, where he said:

My elder brother came near me and stabbed me in my abdomen. He ran away after stabbing . . . Ha stabbed me like this because yesterday I stole buttons from the houses of my elder brother, Kishnaswami's brother-in-law, Sinnappan.

In the Courts below, the appellant denied all knowledge of the offence and attributed the evidence against him to enmity on the part of the witnesses. There is no reason to think that there was any substance in these allegations; and the evidence seems to be beyond reproach.

3. The learned advocate for the appellant concedes that the evidence has made out a case of murder; but he contends that the appellant should be dealt with under Section 10A, Borstal Schools Act, It is conceded that Section 8 would not apply; but it seems clear that under Section 10A of the Act, the Provincial Government has power, in a case where an offender is on the age of the appellant, who is 17 years, and has been sentenced to transportation for life, to send him to a Borstal School if they consider that he might with advantage be detained in such an institution. The appellant is psychologically some-what abnormal and not a hardened criminal. If no action is taken under Section 10-A of the Act, it is difficult to think what suitable action can be taken against the appellant. His crime does not merit a life sentence; and association with hardened criminals in an ordinary jail would cause his character to deteriorate. On the other hand, he might under the sympathetic guidance of the Superintendent of a Borstal School, be helped to adapt himself better to the problems of life.

4. While, therefore, confirming the sentence of transportation for life, I recommended to the Provincial Government that they take action under Section 10A and commit the appellant to a Borstal School for such period as they think fit.

5. Mack J. - I should like to express complete agreement with my learned brother. We are not aware as to precisely what reasons guided the learned Sessions Judge into finding that this was not a suitable case for Borstal treatment. It may be that he applied the principles of Section 8, Borstal Schools Act, to this case, which should be dealt with under Section 10A. Under Section 8 an adolescent offender

should have criminal habits or tendencies or association with persons of bad character. This is a peculiar case in which righteous indignation against his brother's commission of petty thefts developed a powerful emotion in this youth which he could not control and was the main motive for stabbing his brother and leading him into committing a far graver crime.

6. In fact no better case for treatment in a Borstal institution can in my opinion be imagined.

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